

# Senate Commerce Committee

## *Angela Leach 271-3077*

**SB 225-FN**, revising the New Hampshire trust code.

**Hearing Date:** March 7, 2017

**Members of the Committee Present:** Senators Innis, French, Sanborn, Soucy and Lasky

**Members of the Committee Absent :** None

**Bill Analysis:** This bill:

- I. Makes changes to the statutes governing trusts.
- II. Makes changes to the statutes governing trust companies and family trust companies.
- III. Creates a new chapter defining and governing civil law foundations.

**Sponsors:**  
Sen. D'Allesandro

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**Who supports the bill:** Sponsors, Glenn Perlow- Perspecta Trust, Jerry Little-Commissioner of the Banking Department, Nancy Daigle Renaud- Trust Director of the Banking Department

**Who opposes the bill:** None

**Who is neutral on the bill:** Tom Fahey- NH Bankers Association

### **Summary of testimony presented:**

**Senator Sanborn** stated that he may or may not have a conflict and will participate.

**Senator Innis** stated that he has a trust and will participate in the hearing.

**Senator D'Allesandro (PRIME)** Offered an amendment. 10 years ago, initial trust legislation was put in to make NH the best place to locate a family trust. This bill was an economic stimulus that created jobs. NH could be the best place to do this kind of business. Competed with the Dakotas, Florida, Delaware, but to this point NH has been the best place in the country to do business. We have been recognized in publications around the country as a quality place to do business. In order to sustain this positive situation, you constantly have to update the law so that we are consistent in terms of being the best at what we do. This piece of legislation addresses that situation in three areas in terms of trust, trust companies and family trust companies, and civil law foundations. Have worked with the banking entities, the commissioner of banking, and all the associated parties so that we had unanimity. Everyone participated in the development of the legislation. Been very good at locating these family trusts here in the state. Good for NH and good for business.

**Glenn Perlow – Perspecta Trust- (Support)** Been involved since 2006. We work with the NH Trust Council, which is made up of trust companies and trust service providers and they support most of this bill. Much discussion has happened behind the scenes and the amendment makes the legislation a better product. There have been a number of initiatives over the years and this is not static industry. We do compete with a number of other states; we are trying to be the best most competitive state. We are a New England state with good quality regulation which also innovates. Two main sections to the

amendment; the bulk of it is regarding trust company and family trust regulations. In the second part, sections 47 and forward reference the protection of trust property or creditors' rights. There are some issues of public policy that people have different viewpoints on, such as the sections in the beginning of the bill that deal with the NH trust code. The idea is to make something good, better. The largest piece of this bill concerns civil law foundations. In America we have foundations and charitable trust foundations. These really are legal jurisdictions that are called civil law jurisdictions. Essentially, this is a company like structure that acts as a trust. We have had a good dialogue with the DRA about how these would be treated like trusts for taxation purposes. If they move from Europe and start here, that is another way to have a trust if the country you are from does not recognize a trust. These have been in existence for over 100 years, and are well recognized in Germany, the Netherlands, and Cayman Islands, which recognize flexibility and how you establish a trust. We would not expect any American citizen to find an advantage to starting a foundation in place of a trust. Opens up a window for wealth management for many important countries around the world and we would be the first state in the US.

**Senator Innis-** We are modernizing. Why don't all states do this?

**Glen Perlow-** More and more states are doing this. Much innovation in Florida and a number of states are accelerating quite rapidly. NH got on the train early

**Commissioner Jerry Little- Banking Department (Support)-** It has been a strong, detailed discussion with a number of parties to get to this bill. Comments are limited to section 2 of the bill relative to the general design of trust companies and the examination and the regulatory efforts of the banking department. It creates a palette of options for individuals that are interested in starting trust companies in NH. On one side, you have a traditional public trust company, which is highly regulated, doing business with the general public. On the far end, you have an exempt family trust company which is more lightly regulated and overseen with less frequent examinations and limits what information the banking department can ask for. And in between you have traditional family trust companies. We are scaling regulatory oversight to the level of contact that the particular institution has with consumers and other industries. Initial concerns with the legislation as originally drafted is that it too tightly prescribed the ways the banking department could look into the background, the intent, and the style of the trust company being created. The risk is less about consumer harm, but the place NH looks for answers is the banking department. And if we are not allowed to ask questions up front, it makes it difficult for the banking department. The changes that were made in the amendment allows us to do due diligence with examinations, that is necessary, and to make sure the people that are chartering these are capable of running them responsibly. We are able to receive the ongoing information that we need to ensure ourselves the entity is running in a reasonable manner. And if we need to, we can get in there quickly enough to do an examination. We are comfortable with section 2.

**Senator Sanborn-** You spoke about section 2, but the amendment begins at section 22.

**Commissioner Little-** The cover sheet of the bill outlines sections 1, 2, and 3. Section 2 is in regards to making changes to the trust laws.

**Senator Sanborn-** You are in favor of the amendment?

**Commissioner Little-** Yes.

**Senator Lasky-** what is the advantage of NH having civil law foundations?

**Commissioner Little** –It's a cultural thing. We read through the section on the foundation to the point that we have become comfortable with them. It's been used in Europe for a great deal of time. Similar to a Limited Liability Company in the United States. More of a filing and creation of a legal entity, but not one that is recognized by our systems in the US. NH to become one of the best places, not just in the US, but in the world to cite this type of entity. It will more easy to facilitate the transfer of assets within foundations in Europe are likely to blur because the money has to come from somewhere. Should carefully consider if we want to go as low as the proposed minimum capital level. Tremendous progress was made.

**Senator Sanborn-** Capital requirements on family trusts, some of those are operational trusts are but they are not managing liquid assets. I have complete confidence that the commissioner can use his best judgment.

**Tom Fahey-** The commissioner has the discretion. Bankers are conservative people, and there are concerns among professionals in the field.

**Glen Perlow-** Family trust companies are not subject to liquidation under the banker's authority. Agree that there should always be concern with any entity being chartered and regulated by the commissioner.

**Future Action:** Ought to Pass with Amendment

AJL

Date Hearing Report completed: March 9, 2017